

AMENDED IN ASSEMBLY JUNE 27, 2013

SENATE BILL

No. 269

Introduced by Senator Hill

February 14, 2013

An act to amend and renumber Section 10167.9 of, to amend and repeal Sections 10167.5, 10167.13, and 10167.16 of, to amend, repeal, and add Sections 10167, 10167.2, and 10167.3 of, to repeal Sections 10167.4, 10167.7, 10167.8, and 10167.17 of, and to repeal and add Section 10167.6 of, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 269, as amended, Hill. Prepaid rental listing service.

The Real Estate Law provides for the *licensure and regulation-and licensing* of prepaid rental listing services by the Real Estate Commissioner. Existing law prohibits a person from engaging in the business of *a* prepaid rental listing ~~services~~ *service* unless licensed in that capacity or licensed as a real estate broker. A willful violation of these provisions is a crime.

This bill would prohibit the department from issuing a prepaid rental listing service license. ~~This~~ *The* bill, beginning January 1, 2015, would prohibit a person from engaging in that business unless *the person is* licensed as a real estate broker *or is licensed as a real estate salesperson and is acting under the supervision of a real estate broker*. The bill would also require a specified written notice about refunds to be provided ~~to the~~ *provided* to the prospective tenant prior to the acceptance of a fee. *Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.* The bill

also would make related changes, including deleting provisions that pertain to prepaid rental listing service ~~licensing~~ licensure.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that requiring
2 a real estate license to lawfully provide prepaid rental listing
3 services serves the valid governmental purposes of public
4 protection and victims' compensation. The safeguards contained
5 in this legislation are intended to reduce the significant and
6 unacceptably large amounts of prepaid rental listing service fraud
7 perpetrated against unsuspecting, prospective tenants by persons
8 who lack real estate licenses. The safeguards in this bill will also
9 permit persons who may be harmed through prepaid rental listing
10 service fraud to seek compensation from the Consumer Recovery
11 Account, a remedy which is not available to persons who obtain
12 prepaid rental listing services through a person that does not hold
13 a real estate license.

14 SEC. 2. Section 10167 of the Business and Professions Code
15 is amended to read:

16 10167. The definitions used in this section shall govern the
17 construction and terms as used in this article:

18 (a) "Prepaid rental listing service" means the business of
19 supplying prospective tenants with listings of residential real
20 properties for tenancy, by publication or otherwise, pursuant to an
21 arrangement under which the prospective tenants are required to
22 pay an advance or contemporaneous fee (1) specifically to obtain
23 listings or (2) to purchase any other product or service in order to
24 obtain listings, but which does not otherwise involve the
25 negotiation of rentals by the person conducting the service.
26 "Prepaid rental listing service" does not include the business of
27 providing roommate referral information designed to assist persons

1 in locating a roommate who meets various selection criteria related
2 to the prospective roommate's personal traits, characteristics, habits
3 or preferences, and selection criteria related to the residential real
4 property occupied by the prospective roommate.

5 (b) "Licensee" means a person licensed to conduct a prepaid
6 rental listing service or a person engaged in the business of a
7 prepaid rental listing service under a real estate broker license.

8 (c) "Location" means the place, other than the main or branch
9 office of a real estate broker, where a prepaid rental listing service
10 business is conducted.

11 (d) "Designated agent" means the person who is in charge of
12 the business of a prepaid rental listing service at a given location.

13 (e) "Fee" means the charge required by a licensee (1) to obtain
14 listings of residential real properties for tenancy or (2) to purchase
15 any other product or service in order to obtain listings.

16 (f) "Service charge" means the amount of the fee that a licensee
17 may retain if a prospective tenant finds housing through a source
18 other than the listings supplied by the licensee.

19 (g) This section shall remain in effect only until January 1, 2015,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before January 1, 2015, deletes or extends that date.

22 SEC. 3. Section 10167 is added to the Business and Professions
23 Code, to read:

24 10167. The definitions used in this section shall govern the
25 construction and terms as used in this article:

26 (a) "Prepaid rental listing service" means the business of
27 supplying prospective tenants with listings of residential real
28 properties for tenancy, by publication or otherwise, pursuant to an
29 arrangement under which the prospective tenants are required to
30 pay an advance or contemporaneous fee (1) specifically to obtain
31 listings or (2) to purchase any other product or service in order to
32 obtain listings, but which does not otherwise involve the
33 negotiation of rentals by the person conducting the service.
34 "Prepaid rental listing service" does not include the business of
35 providing roommate referral information designed to assist persons
36 in locating a roommate who meets various selection criteria related
37 to the prospective roommate's personal traits, characteristics, habits
38 or preferences, and selection criteria related to the residential real
39 property occupied by the prospective roommate.

1 (b) “Licensee” means a person engaged in the business of a
2 prepaid rental listing service under a real estate ~~broker~~ license.

3 (c) “Location” means the place, other than the main or branch
4 office of a real estate broker, where a prepaid rental listing service
5 business is conducted.

6 (d) “Designated agent” means the person who is in charge of
7 the business of a prepaid rental listing service at a given location.

8 (e) “Fee” means the charge required by a licensee (1) to obtain
9 listings of residential real properties for tenancy or (2) to purchase
10 any other product or service in order to obtain listings.

11 (f) “Service charge” means the amount of the fee that a licensee
12 may retain if a prospective tenant finds housing through a source
13 other than the listings supplied by the licensee.

14 (g) This section shall become operative on January 1, 2015.

15 SEC. 4. Section 10167.2 of the Business and Professions Code
16 is amended to read:

17 10167.2. (a) It is unlawful for any person to engage in the
18 business of a prepaid rental listing service unless licensed in that
19 capacity or unless licensed as a real estate broker.

20 (b) (1) The requirements of this article apply only to the
21 provision of listings of residential real properties for tenancy by
22 prepaid rental listing services. Except if expressly provided
23 otherwise in this article, the requirements of this article do not
24 apply to any other goods or services sold by a prepaid rental listing
25 service as long as the purchase of those goods or services is not
26 required to obtain those listings, and as long as the purchase of
27 those goods or services is not included in the same contract as the
28 contract to provide those listings, and as long as the contract to
29 provide those listings clearly specifies that the purchase of any
30 other goods and services is optional, and as long as the price
31 charged for any other goods and services is fair and reasonable.

32 (2) In an action alleging that the price charged for any other
33 goods and services is not fair and reasonable, the burden shall be
34 on the commissioner to demonstrate that the price charged
35 unreasonably exceeds the fee customarily charged for the same or
36 comparable goods or services in the community in which the
37 prepaid rental listing service operates. The fact that the price
38 charged for goods or services exceeds the cost incurred by the
39 prepaid rental listing service shall not render the price charged for
40 the goods or services to be unfair or unreasonable, so long as the

1 price charged does not unreasonably exceed the fee customarily
2 charged for the same or comparable goods or services in the
3 community in which the prepaid rental listing service operates.

4 (3) This section shall remain in effect only until January 1, 2015,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2015, deletes or extends that date.

7 SEC. 5. Section 10167.2 is added to the Business and
8 Professions Code, to read:

9 10167.2. (a) It is unlawful for any person to engage in the
10 business of a prepaid rental listing service unless *the person is*
11 *licensed as a real estate broker or is licensed as a real estate*
12 *salesperson and is acting under the supervision of a real estate*
13 *broker.*

14 (b) (1) The requirements of this article apply only to the
15 provision of listings of residential real properties for tenancy by
16 prepaid rental listing services. Except if expressly provided
17 otherwise in this article, the requirements of this article do not
18 apply to any other goods or services sold by a prepaid rental listing
19 service as long as the purchase of those goods or services is not
20 required to obtain those listings, and as long as the purchase of
21 those goods or services is not included in the same contract as the
22 contract to provide those listings, and as long as the contract to
23 provide those listings clearly specifies that the purchase of any
24 other goods and services is optional, and as long as the price
25 charged for any other goods and services is fair and reasonable.

26 (2) In an action alleging that the price charged for any other
27 goods and services is not fair and reasonable, the burden shall be
28 on the commissioner to demonstrate that the price charged
29 unreasonably exceeds the fee customarily charged for the same or
30 comparable goods or services in the community in which the
31 prepaid rental listing service operates. The fact that the price
32 charged for goods or services exceeds the cost incurred by the
33 prepaid rental listing service shall not render the price charged for
34 the goods or services to be unfair or unreasonable, so long as the
35 price charged does not unreasonably exceed the fee customarily
36 charged for the same or comparable goods or services in the
37 community in which the prepaid rental listing service operates.

38 (c) This section shall become operative on January 1, 2015.

39 SEC. 6. Section 10167.3 of the Business and Professions Code
40 is amended to read:

10167.3. (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each application shall be on forms provided by the department, shall be signed by the applicant, and shall be accompanied by a one hundred dollar (\$100) application fee for the first location, and a twenty-five dollar (\$25) application fee for each additional location of the applicant.

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the department. A twenty-five dollar (\$25) application fee for the remainder of a license term for each location to be added shall accompany the application.

(b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

(c) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 7. Section 10167.3 is added to the Business and Professions Code, to read:

10167.3. (a) A real estate ~~broker~~ *licensee* may provide a prepaid rental listing service ~~at a licensed office for the conduct of his or her real estate brokerage~~ *any location where* business ~~if the business at the office~~ is conducted under the immediate supervision of ~~the~~ a broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

(b) This section shall become operative on January 1, 2015.

SEC. 8. Section 10167.4 of the Business and Professions Code is repealed.

SEC. 9. Section 10167.5 of the Business and Professions Code is amended to read:

10167.5. The business at a location licensed pursuant to subdivision (a) of Section 10167.3 shall be conducted under the immediate supervision of the licensee or a designated agent who is not a designated agent at any other location. Whenever a designated agent ceases permanently to be a designated agent at any location because of death, termination of employment, or any

1 other reason, the licensee, within five days thereafter, shall give
2 written notice to the department. A license issued for a particular
3 location shall automatically expire 60 days after the time the
4 business conducted at such location ceases for any reason to be
5 under the charge of and managed by the designated agent of record
6 with the department, unless within such 60-day period the licensee
7 submits written notice of the new designated agent to the
8 department.

9 A designated agent of the licensed service may serve as
10 designated agent for the location in question as well as for the
11 location for which he or she is the designated agent of record during
12 the period of 60 days.

13 This section shall remain in effect only until January 1, 2015,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2015, deletes or extends that date.

16 SEC. 10. Section 10167.6 of the Business and Professions
17 Code is repealed.

18 SEC. 11. Section 10167.6 is added to the Business and
19 Professions Code, to read:

20 10167.6. Prior to the acceptance of a fee, and in addition to the
21 contract required pursuant to Section 10167.4 a licensee shall
22 provide the prospective tenant with the following written notice,
23 in a type size of at least 12-point type:
24

25 YOU MAY BE ENTITLED TO A REFUND IF YOU DO NOT
26 RECEIVE THE SERVICES YOU HAVE BEEN PROMISED.
27 COMPLETE TERMS AND CONDITIONS GOVERNING THE
28 REFUND TO WHICH YOU MAY BE ENTITLED ARE
29 CONTAINED IN YOUR CONTRACT. THE FOLLOWING IS
30 A SIMPLIFIED SUMMARY OF SOME OF THE RIGHTS
31 DESCRIBED IN YOUR CONTRACT:

32 If (name of licensee) does not provide you with at least three
33 available rental properties meeting the specifications of your
34 contract within five days after you pay the fee charged by (name
35 of licensee), you are entitled to a full refund. To obtain this refund,
36 you must request it from (name of licensee) in writing within 15
37 days of paying your fee.

38 If you do not obtain a rental through the services of (name of
39 licensee) during the term of your contract, you are entitled to a
40 refund of your fee, minus a service charge, which may not exceed

1 ____ dollars (\$ ____). To obtain this refund, you must provide
2 (name of licensee) with written documentation or a signed
3 statement that you obtained a rental without the assistance of (name
4 of licensee) or that you did not move. This documentation or signed
5 statement must be provided to (name of licensee) with a written
6 request for refund, within 10 days following the expiration of your
7 contract.

8 If (name of licensee) fails to refund your money, as required by
9 your contract, you may sue (name of licensee) in a small claims
10 court. The court may award you the refund you failed to receive,
11 plus additional damages, up to \$1,000.

12 If you wish to file a complaint about (name of licensee) or if you
13 cannot collect on a court award, you should contact the ~~Department~~
14 *Bureau* of Real Estate at 1-877-373-4542 or www.dre.ca.gov.
15

16 SEC. 12. Section 10167.7 of the Business and Professions
17 Code is repealed.

18 SEC. 13. Section 10167.8 of the Business and Professions
19 Code is repealed.

20 SEC. 14. Section 10167.9 of the Business and Professions
21 Code is amended and renumbered to read:

22 10167.4. (a) Prior to the acceptance of a fee, a licensee shall
23 offer the prospective tenant a written contract, either on paper or
24 in electronic form, which shall include at least the following:

25 (1) The name and license number of the licensee and the
26 ~~addresses address~~ and ~~telephone numbers number~~ of the principal
27 office or location of the licensee ~~and of the location, or branch~~
28 ~~office of a real estate broker~~, providing the listing to the prospective
29 tenant.

30 (2) Acknowledgment of receipt of the fee, including the amount.

31 (3) A description of the service to be performed by the licensee,
32 including significant conditions, restrictions, and limitations where
33 applicable.

34 (4) The prospective tenant's specifications for the rental
35 property, including, but not limited to:

36 (A) Type of structure, including, but not limited to, detached
37 single-family home, apartment, or duplex.

38 (B) Location by commonly accepted residential area name, by
39 designation of boundary streets, or by any other manner affording

1 a reasonable means of identifying locations acceptable to the
2 prospective tenant.

3 (C) Furnished or unfurnished.

4 (D) Number of bedrooms required.

5 (E) Maximum acceptable monthly rental.

6 (5) The contract expiration date, which shall not be later than
7 90 days from the date of execution of the contract.

8 (6) A clause setting forth the right to a full or partial refund of
9 the fee paid as provided in Section 10167.10.

10 (7) The signature and printed full name of the licensee ~~or of the~~
11 ~~designated agent, real estate salesperson, or employee acting on~~
12 ~~behalf of the licensee.~~ The signature of any person, including any
13 signature required by the terms of the contract to be provided by
14 the prospective tenant, may be provided in any electronic form
15 that provides a reasonable method of indicating that the individual
16 whose signature is required authorized the contract to be signed
17 in that electronic form.

18 (8) A clause in bold type letters outlining the small claims court
19 remedy available to the prospective tenant.

20 (9) A clause in boldface type letters clearly stating that the
21 purchase of any goods and services other than the provision of
22 listings of residential real properties for tenancy is optional.

23 (b) (1) The original of each contract, any separate contracts for
24 required goods or services, refund claims, receipts and any other
25 relevant documents shall be retained by the licensee for a period
26 of not less than three years from the date of termination of the
27 contract during which time the contract shall be subject to
28 examination by a duly authorized representative of the
29 commissioner. Any records retained pursuant to this subdivision
30 that are stored in the ordinary course of business in digital media
31 shall, upon request of a duly authorized representative of the
32 commissioner, be provided on diskette, CD-ROM or similar
33 portable digital storage medium. For purposes of this subdivision,
34 the "original" of a contract executed in electronic form shall be
35 either the copy of the contract stored in digital media or a paper
36 printout of that contract.

37 (2) Any licensee, or employee thereof, shall dispose of the
38 documents required to be kept pursuant to paragraph (1) by
39 shredding or other appropriate means so that the identity of the
40 prospective tenant may not be determined from the disposed

1 information alone or in combination with other publicly available
2 information.

3 (c) The form of contract proposed to be used by a licensee to
4 effect compliance with this section shall be filed with the
5 department prior to use. Any modification of a form previously
6 filed with the department, including a change in the name or
7 business address of the licensee, shall also be filed prior to use.
8 The department shall withhold the issuance or renewal of a license
9 until the department has approved the contract. If a proposed
10 modification to a contract has not been approved or disapproved
11 within 15 working days of being filed with the department, the
12 proposed modification shall be deemed approved. If a proposed
13 modification or contract provision is disapproved, the department
14 shall communicate that disapproval in writing to the licensee within
15 15 working days of being filed with the department, accompanied
16 by a written justification of why the modification or contract
17 provision is contrary to the requirements of this article.

18 (d) Notwithstanding any other provision of law, a contract for
19 prepaid rental listing services executed in electronic form, and
20 signed in any electronic form that provides a reasonable method
21 of indicating that the individual whose signature is required
22 authorized the contract to be signed in electronic form, shall be
23 valid to the same extent as an executed written contract. Upon
24 request by the customer, the licensee shall deliver an executed
25 paper copy to the customer within five working days of receiving
26 the request.

27 SEC. 15. Section 10167.13 of the Business and Professions
28 Code is amended to read:

29 10167.13. (a) A prepaid rental listing service license issued
30 by the department shall be for a period of two years. An application
31 and fee for renewal filed with the department before midnight of
32 the last day of the period for which a previous license was issued
33 entitles the licensee to continue operating at all locations specified
34 in the previous license for which a renewal fee is paid.

35 (b) On and after January 1, 2014, the department shall not issue
36 a prepaid rental listing service license.

37 (c) This section shall remain in effect only until January 1, 2015,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before January 1, 2015, deletes or extends that date.

1 SEC. 16. Section 10167.16 of the Business and Professions
2 Code is amended to read:

3 10167.16. (a) A person or corporation licensed pursuant to
4 this article and not engaging in acts for which a real estate license
5 is required under Article 1 (commencing with Section 10130) of
6 Chapter 3 of Part 1 of Division 4, shall be subject, in addition to
7 the provisions of this article, to the provisions of Chapter 1
8 (commencing with Section 10000) and Chapter 2 (commencing
9 with Section 10050) of Part 1 of Division 4, and to Sections 10450,
10 10452, 10453, and 10454.

11 (b) This section shall remain in effect only until January 1, 2015,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2015, deletes or extends that date.

14 SEC. 17. Section 10167.17 of the Business and Professions
15 Code is repealed.

16 SEC. 18. *No reimbursement is required by this act pursuant*
17 *to Section 6 of Article XIII B of the California Constitution because*
18 *the only costs that may be incurred by a local agency or school*
19 *district will be incurred because this act creates a new crime or*
20 *infraction, eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section 17556 of*
22 *the Government Code, or changes the definition of a crime within*
23 *the meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*